

Union Calendar No. 32

103D CONGRESS  
1ST SESSION

**H. R. 1032**

[Report No. 103-64]

**A BILL**

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs.

APRIL 22, 1993

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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**IN THE HOUSE OF REPRESENTATIVES**

FEBRUARY 23, 1993

Mr. MONTGOMERY (for himself, Mr. STUMP, Mr. EDWARDS of California, Mr. SMITH of New Jersey, Mr. APPELGATE, Mr. BILIRAKIS, Mr. EVANS, Mr. QUINN, Mr. PENNY, Mr. ROWLAND, Mr. SLATTERY, Mr. KENNEDY, Mr. SANGMEISTER, Ms. LONG, Mr. EDWARDS of Texas, Mr. CLEMENT, Mr. FILNER, Mr. GUTIERREZ, Mr. BAESLER, Mr. BISHOP, Mr. CLYBURN, Mr. KREIDLER, Ms. BROWN of Florida, Mr. HEFNER, Mr. RICHARDSON, Mr. STENHOLM, Mr. PAYNE of Virginia, Mr. PARKER, and Mr. OLVER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

APRIL 22, 1993

Additional sponsors: Mr. SPENCE, Mr. RIDGE, Mr. TEJEDA, Mr. EMERSON, Ms. WATERS, and Mrs. THURMAN

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[Omit the part struck through and insert the part printed in *italic*]

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**A BILL**

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints

of unlawful employment discrimination arising within the Department of Veterans Affairs.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Veter-  
5 ans Affairs Employment Discrimination Act”.

6 **SEC. 2. DEPARTMENT OF VETERANS AFFAIRS EMPLOY-**  
7 **MENT DISCRIMINATION RESOLUTION PROCE-**  
8 **DURES.**

9 (a) IN GENERAL.—Title 38, United States Code, is  
10 amended by inserting after chapter 7 the following new  
11 chapter:

12 **“CHAPTER 8—EMPLOYMENT**  
13 **DISCRIMINATION**

“Sec.

“801. Scope of chapter.

“802. Office of Employment Discrimination Complaints Resolution.

“803. Informal complaint resolution.

“804. Investigation of complaints.

“805. Final agency decision; hearings.

“806. Review of final agency decisions.

“807. Unlawful employment discrimination defined.

14 **“§ 801. Scope of chapter**

15 “(a) The procedures established in this chapter shall  
16 be implemented in a manner consistent with procedures  
17 applicable under regulations prescribed by the Equal Em-  
18 ployment Opportunity Commission.

1       ~~“(b) Nothing in this chapter supersedes any right or~~  
2 ~~obligation of an employee to elect (in lieu of procedures~~  
3 ~~under this chapter) to raise an allegation of unlawful em-~~  
4 ~~ployment discrimination under the appeal procedures of~~  
5 ~~the Merit Systems Protection Board or under grievance~~  
6 ~~procedures established under a collective bargaining agree-~~  
7 ~~ment.~~

8       (b) *In the case of an employee of the Department who*  
9 *alleges that the employee has been subjected to unlawful em-*  
10 *ployment discrimination (as defined in section 807 of this*  
11 *title), the allegation shall be considered under the proce-*  
12 *dures applicable to the Merit Systems Protection Board*  
13 *under title 5 (rather than under the procedures set forth*  
14 *in this chapter) if the action (or failure to act) of which*  
15 *the employee complains is an employment action or prac-*  
16 *tice that is otherwise appealable to the Merit Systems Pro-*  
17 *tection Board.*

18       (c) *Nothing in this chapter supersedes—*

19               (1) *the rights and remedies available to employ-*  
20 *ees under title VII of the Civil Rights Act of 1964 (42*  
21 *U.S.C. 2000e et seq.), including the rights and rem-*  
22 *edies provided in section 1977A of the Revised Stat-*  
23 *utes (42 U.S.C. 1981a); or*

24               (2) *any right or obligation of an employee to*  
25 *elect (in lieu of procedures under this chapter) to*

1       *raise an allegation of unlawful employment discrimi-*  
2       *nation under grievance procedures established under a*  
3       *collective bargaining agreement.*

4       **“§ 802. Office of Employment Discrimination Com-**  
5               **plaints Resolution**

6       “(a)(1) There is in the Department an Office of Em-  
7       ployment Discrimination Complaints Resolution (herein-  
8       after in this chapter referred to as the ‘Office’), which  
9       shall be headed by a Director. The Director shall report  
10      only to the Secretary and Deputy Secretary.

11      “(2) Subject to the direction of the Secretary, the Di-  
12      rector shall have sole responsibility within the Department  
13      for administering the procedures under this chapter for  
14      resolving complaints of unlawful employment discrimina-  
15      tion arising within the Department.

16      “(3) In addition to the functions of the Director  
17      under paragraph (2), the Director shall perform such  
18      other functions as the Secretary may prescribe consistent  
19      with the functions of the Director under paragraph (2).

20      “(b) The Secretary shall employ within the Office ad-  
21      ministrative law judges appointed in accordance with sec-  
22      tion 3105 of title 5 for the purposes of this chapter and  
23      such other personnel as the Office may require. *In ap-*  
24      *pointing administrative law judges, the Secretary should*  
25      *consider the composition of the persons appointed, taken as*

1 *a group, in terms of race, sex, and veterans status, com-*  
2 *pared with the composition of the total Department*  
3 *workforce in terms of race, sex, and veterans status.*

4 “(c) The Secretary shall ensure that the Director is  
5 furnished sufficient resources to enable the Director to  
6 carry out the functions of the Office under this chapter  
7 in a timely manner.

8 “(d) The Secretary shall include in the documents  
9 submitted to Congress by the Secretary in support of the  
10 President’s budget for each fiscal year—

11 “(1) detailed information on the budget for the  
12 Office;

13 “(2) the Secretary’s opinion as to whether the  
14 resources (including the number of employees) pro-  
15 posed in the budget for that fiscal year are adequate  
16 to enable the Secretary to comply with statutory and  
17 regulatory deadlines for the administration of the  
18 procedures under this chapter and other provisions  
19 of law relating to the resolution of complaints of un-  
20 lawful employment discrimination involving the De-  
21 partment; and

22 “(3) a report on the activities of the Office dur-  
23 ing the preceding fiscal year, including (A) a state-  
24 ment of the number and nature of complaints of un-  
25 lawful employment discrimination received and the

1 number and nature of complaints resolved, and the  
2 results of any appellate review, during the year, (B)  
3 a description of the timeliness of the resolution of  
4 complaints during the year, and (C) a statement of  
5 significant decisions and trends affecting the work of  
6 the Office.

7 “(e)(1) The Director shall prescribe—

8 “(A) standards of timeliness for the expeditious  
9 resolution of complaints of unlawful employment dis-  
10 crimination under this chapter;

11 “(B) the qualifications and training require-  
12 ments for employees of the Office; ~~and~~

13 “(C) requirements for record-keeping pertaining  
14 to counseling and investigations by employees of the  
15 Office; ~~and~~

16 “(D) *standards for the conduct of investigations*  
17 *under section 804 of this title.*

18 “(2) Regulations under paragraph (1) shall be con-  
19 sistent with regulations prescribed by the Equal Employ-  
20 ment Opportunity Commission, except that, in the interest  
21 of the expeditious resolution of complaints, the Director  
22 may prescribe shorter time periods with respect to any  
23 deadline or administrative period that is applicable only  
24 to the time within which the Government may (or is re-  
25 quired to) act.

1 **“§ 803. Informal complaint resolution**

2 “Employees of the Office shall counsel employees of  
3 the Department, and applicants for employment with the  
4 Department, who allege that they have been subject to un-  
5 lawful employment discrimination by an officer or em-  
6 ployee of the Department. The Office shall seek to resolve  
7 such complaints in an expeditious and impartial manner  
8 through informal investigation and conciliation using pro-  
9 cedures prescribed by the Director.

10 **“§ 804. Investigation of complaints**

11 “(a) If a complaint of unlawful employment discrimi-  
12 nation is filed with the Department and the complaint is  
13 not resolved through the informal resolution process under  
14 section 803 of this title, the Director shall assign the com-  
15 plaint to an administrative law judge, who shall determine  
16 whether the complaint shall be accepted for investigation.

17 “(b)(1) The administrative law judge assigned to a  
18 complaint shall make such determination in accordance  
19 with regulations of the Equal Employment Opportunity  
20 Commission, except that if the administrative law judge  
21 determines that the complaint is without merit, the admin-  
22 istrative law judge may determine that the complaint is  
23 not to be accepted for investigation.

24 “(2) A decision that a complaint is not to be accepted  
25 for investigation is a final agency decision of the matter.



1       “(c)(1) If the administrative law judge determines  
2 that the complaint is to be accepted, the Director shall  
3 promptly provide for an investigation of the complaint,  
4 which shall be carried out by employees of the Office (or  
5 by contract personnel acquired by the Director). The em-  
6 ployee (or contractor) conducting the investigation shall  
7 submit to the Director a complete written report of the  
8 results of the investigation.

9       “(2) If a portion of a complaint is accepted for inves-  
10 tigation and a portion is not accepted, the individual filing  
11 the complaint or the Department may request the admin-  
12 istrative law judge to direct the suspension of the inves-  
13 tigation of the portion of the complaint accepted for inves-  
14 tigation pending the results of any review of the decision  
15 not to accept the other portion.

16       “(3) The Director shall furnish a copy of the inves-  
17 tigative report *(including a copy of the investigative file)*  
18 to the administrative law judge, the individual who filed  
19 the complaint, and ~~the individual whose actions, or failure~~  
20 ~~to act, gave rise to the complaint of unlawful employment~~  
21 ~~discrimination~~ *the Secretary*. The administrative law judge  
22 may direct that an additional investigation be made if the  
23 administrative law judge determines that an additional in-  
24 vestigation is warranted.

1       ~~“(d) The Director shall prescribe standards for the~~  
 2 ~~conduct of investigations under this section.~~

3       **“§ 805. Final agency decision; hearings**

4       “(a) The final agency decision on a complaint of un-  
 5 lawful ~~unemployment~~ *employment* discrimination, in a  
 6 case not resolved through informal procedures under sec-  
 7 tion 803 of this title, shall be made by an administrative  
 8 law judge.

9       “(b) The individual filing the complaint may request  
 10 a hearing on the matter. Any such request shall be made  
 11 in such time and manner as may be prescribed by the Di-  
 12 rector. The administrative law judge shall grant a request  
 13 for a hearing unless, after giving appropriate notice *and*  
 14 *allowing an opportunity to respond to such notice*, the ad-  
 15 ministrative law judge determines that there is no genuine  
 16 dispute as to a material fact.

17       ~~“(c) In acting upon a complaint, an administrative~~  
 18 ~~law judge—~~

19               ~~“(1) may conduct a hearing on the matter;~~

20               ~~“(2) may refer the matter for a hearing by a~~  
 21 ~~hearing examiner; or~~

22               ~~“(3) may decide the matter without a hearing.~~

23       ~~“(d) If a hearing is held, the hearing shall be subject~~  
 24 ~~to section 556 of title 5.~~

1       “(c) *If the administrative law judge grants a request*  
2 *of the individual filing the complaint for a hearing, the ad-*  
3 *ministrative law judge—*

4               “(1) *may conduct the hearing on the matter; or*  
5               “(2) *may refer the matter for a hearing by a*  
6 *hearing examiner.*

7       “(d) *In any hearing under this section, the adminis-*  
8 *trative law judge or hearing examiner presiding at the*  
9 *hearing shall have the authorities set forth in section 556(c)*  
10 *of title 5.*

11   **“§ 806. Review of final agency decisions**

12       “(a) *If the final agency decision in a case complaining*  
13 *of unlawful employment discrimination by an officer or*  
14 *employee of the Department is adverse to the individual*  
15 *filing the complaint, the individual may appeal the deci-*  
16 *sion to the Equal Employment Opportunity Commission*  
17 *or to may institute an action on the case in the appropriate*  
18 *United States district court, as provided by law.*

19       “(b) *If the final agency decision in such a case is*  
20 *adverse to the Department, the Secretary may appeal the*  
21 *decision to the Equal Employment Opportunity Commis-*  
22 *sion. Any such appeal shall be made within 30 days after*  
23 *the date of the receipt by the Secretary of the decision.*  
24 *The Equal Employment Opportunity Commission may act*

1 on such an appeal in the same manner as in the case of  
 2 an appeal by an individual against a final agency decision.

3 **“§ 807. Unlawful employment discrimination defined**

4 “For purposes of this chapter, the term ‘unlawful em-  
 5 ployment discrimination’ means any action, or failure to  
 6 act, that is a violation of any of the following:

7 “(1) Title VII of the Civil Rights Act of 1964  
 8 (42 U.S.C. 2000e et seq.).

9 “(2) The Age Discrimination in Employment  
 10 Act of 1967 (29 U.S.C. 621 et seq.).

11 “(3) Section 6 of the Fair Labor Standards Act  
 12 of 1938 (29 U.S.C. 206).

13 “(4) Section 501 of the Rehabilitation Act of  
 14 1973 (29 U.S.C. 791).”.

15 (b) CLERICAL AMENDMENT.—The tables of chapters  
 16 at the beginning of title 38, United States Code, and at  
 17 the beginning of part I of such title, are amended by in-  
 18 serting after the item relating to chapter 7 the following  
 19 new item:

**“8. Employment Discrimination ..... 801”.**

20 **SEC. 3. TRANSITION.**

21 Chapter 8 of title 38, United States Code, as added  
 22 by section 2, shall apply with respect to complaints of un-  
 23 lawful employment discrimination that are filed after the  
 24 end of the six-month period beginning on the date of the  
 25 enactment of this Act. Any complaint filed before the end

1 of such period shall be resolved in accordance with the  
2 procedures in effect on the date of the enactment of this  
3 Act.

4 **SEC. 4. WHISTLEBLOWER PROTECTION FOR TITLE 38 EM-**  
5 **PLOYEES.**

6 *(a) IN GENERAL.—(1) Chapter 74 of title 38, United*  
7 *States Code, is amended by inserting at the end of sub-*  
8 *chapter V the following new section:*

9 **“§ 7465. Disclosures of violations of law, gross mis-**  
10 **management, and certain other matters:**  
11 **protection of employees**

12 *“(a) The provision of section 2302(b)(8) of title 5 shall*  
13 *apply with respect to an employee, or applicant for employ-*  
14 *ment, in a position covered by this chapter in the same*  
15 *manner as if that position were a ‘covered position’ within*  
16 *the meaning of section 2302(a)(2)(B) of title 5.*

17 *“(b) Subsection (a) shall apply for purposes of apply-*  
18 *ing the provisions of subchapters II and III of chapter 12*  
19 *of title 5 which relate to any authority to conduct investiga-*  
20 *tions, or to seek or administer any corrective action, dis-*  
21 *ciplinary action, or other remedy in connection with a pro-*  
22 *hibited personnel practice described in section 2302(b)(8)*  
23 *of such title.”.*

1       (2) *The table of sections at the beginning of such chap-*  
2 *ter is amended by inserting after the item relating to section*  
3 *7464 the following new item:*

*“7465. Disclosures of violations of law, gross mismanagement, and certain other  
      matters: protection of employees.”.*

4       (b) *EFFECTIVE DATE.—(1) Subject to paragraph (2),*  
5 *section 7465 of title 38, United States Code, as added by*  
6 *subsection (a), shall apply with respect to personnel actions*  
7 *occurring before, on, or after the date of the enactment of*  
8 *this Act, but subject to any deadline for commencing any*  
9 *action for relief.*

10       (2) *Such section shall not affect any administrative*  
11 *proceeding pending on the date of the enactment of this Act,*  
12 *and order shall be issued in any such proceeding, and ap-*  
13 *peals shall be taken therefrom, as if such section had not*  
14 *been enacted.*